Petition

NO. 81 5009

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

JULY 2, 1981
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SUPREME COURT U.S.

GARY CARWELL CROUCH AND MARY CROUCH,

Petitioners,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners Pro Se

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QUESTIONS PRESENTED FOR REVIEW

1. Can personal letters be seized pursuant to a search warrant which identifies property to be seized as "chemicals, laboratory equipment, and other paraphenalia (sic), which are used in the illegal manufacture of methamphetamines in violation of 21 U.S.C. §841(a)(1)?"

2. Assuming, arguendo, seizure of the letters cannot be justified by the warrant described above, can this seizure be justified under the plain view doctrine where the letters were in envelopes bundled together in a desk drawer and their incriminating nature was not immediately apparent?

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The Court of Appeals for the Fourth Circuit entered its opinion on May 4, 1981 in Case Nos. 79-5080 and 79-5096. A copy of the opinion affirming the District Court for the District of South Carolina is attached as Attachment 1.

JURISDICTIONAL STATEMENT

Jurisdiction of the Court is involved under the United States Supreme Court Rule 17(1)(e). The petitioners aver that the Court of Appeals has decided a federal question in a way that conflicts with applicable decisions of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment - unreasonable search and seizure.

STATEMENT OF THE CASE

On August 8, 1978, Mary Crouch, and her two sons, Gary Carwell Crouch, and James William Crouch were indicted in a two count indictment alleging conspiracy to manufacture and distribute methamphetamines and to attempt to manufacture methamphetamines. All defendants timely moved to suppress various letters obtained during a search of the Crouch residence, but the motion was denied after a full hearing before the Honorable Charles E. Simons, Jr. on September 14, 1978. Trial began in the District Court for the District of South Carolina on October 16, 1978, but Mary Crouch and James William Crouch were severed at the end of the Government's case on October 18, 1978. The case went to the jury as to Gary Carwell Crouch and he was convicted on both counts. Subsequently, Mary Crouch

and James William Crouch entered into an agreement and stipulation whereby Mary Crouch agreed to waive her right to a jury trial and stipulated that the evidence previously submitted at the trial of October 16-18 would be adopted and incorporated by reference to constitute the Government's case-in-chief at a bench trial before Judge Simons. In addition, the Government agreed to dismiss the indictment against James William Crouch after a verdict was rendered at the bench trial of Mary Crouch. The bench trial was held on February 5, 1979 at which time Mary Crouch was found guilty on both counts. Gary Crouch received a sentence of five years, and Mary Crouch was sentenced to a year and a day. Both defendants timely appealed to the United States Court of Appeals for the Fourth Circuit. By order filed April 23, 1979, the two appeals were consolidated. The Fourth Circuit affirmed the convictions by its published opinion dated May 4, 1981.

At the time of the indictment, Mary Crouch was 61 years old and had two adult sons, Gary Crouch and James William Crouch (hereinafter may be referred to as "Billy Crouch"). The family lived at 2207 Lincoln Street, Columbia, South Carolina, which building was divided into three apartments. Billy lived upstairs, Gary occupied an apartment on the first floor on the South side of the house and Mary Crouch and her husband occupied the apartment on the North side. At the time of the events leading up to this indictment, Gary Crouch was incarcerated at the Goodman Correctional Institute, a state correctional institution, where he was serving a state sentence for an unrelated offense. Mrs. Crouch was an employee at the South Carolina State Hospital where she had been so employed for approximately twenty years.

During the summer of 1978, agents for the Federal Drug Enforcement Administration (DEA) received information under their precursory program that certain precursors had been ordered for delivery to the residence at 2207 Lincoln Street. Precursors are those chemicals that can be used for the manufacture of control substances. DEA agents learned, too, that various kinds of equipment had also been ordered. Based upon this information, DEA agents began surveillance of the premises and the Crouches and on July 3, 1978, obtained two search warrants to search both the residents at 2207 Lincoln Street and the person of Gary Crouch and his personal belongings in a motor vehicle used to transport him to Goodman Correctional Institute on July 6, 1978. In the affidavit accompanying the search warrant, agents stated among other things, that they saw Gary and Billy Crouch go to the library. The search warrant, however, did not include records, documents, or other papers as things to be seized. Nor did it include any reference to personal letters. At issue in this case is the search warrant for the residents at 2207 Lincoln Street which specified things to be seized as "chemicals, laboratory equipment, and other paraphernalia (sic), which are used in the illegal manufacture of methamphetamines in violation of 21 U.S.C. §841(a)(1)."

The search warrants were executed on July 6, 1978 by DEA Agent Norman C. Shumard and approximately eleven other agents. When they approached the house to search it, Billy Crouch was the only person present and he was in the backyard. Mary Crouch was in the process of returning Gary Crouch to Goodman Correctional Institute from a three-day furlough over the July 4 weekend. As previously stated, the house was divided into three apartments. The search began in the southern side of the first floor which is normally occupied by Gary Crouch. Various pieces of laboratory equipment, paraphernalia, empty

bottles and chemicals were taken from the bedroom in a search that lasted for approximately two hours. During this time Mary Crouch returned from Goodman and sat quietly while agents searched her home. No one was arrested at this time.

During the search, Agent Shumard noticed a desk on the Gary Crouch side of the house in the hall area. He opened the drawer and recalled seeing letters that were bundled together. These letters were in envelopes addressed from Mary Crouch to Gary Crouch and Agent Shumard testified that there was nothing immediately incriminating about them. Agent Shumard opened the letters and began reading them. He read one letter and then another and then another. Subsequently agents approached Mary Crouch who had been sitting quietly for some time and opened her purse where they found additional letters. The letters were primarily personal in nature but did contain passages that were incriminating to Mary Crouch and Gary Crouch.

The return on the search warrant signed by Agent Shumard listed the following property seized pursuant to the warrant:

1. Various pieces of laboratory equipment, paraphernalia, empty bottles and chemicals. Some containers with residue.

2. Sawed off shotgun.

3. Various empty wooden and cardboard boxes.

4. Various papers, letters, catalogs and other documents.

5. Various empty and partially full bottles of capsules, The shotgun was very old and was found in Billy Crouch's apartment on the second floor.

A motion was timely made to suppress the letters which motion was denied and the letters were introduced as evidence against Mary Crouch and Gary Crouch.

BASIS OF INITIAL FEDERAL COURT JURISDICTION

Mary Crouch and her son, Gary Carwell Crouch, were indicted and tried in the United States District Court of South Carolina for conspiracy to manufacture and distribute methamphetamine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), 846, and the attempted manufacture of the same substance in violation of 21 U.S.C. §§ 841 (a)(1), 846, and 18 U.S. C. § 2.

ARGUMENT

I. ONE THING CANNOT BE SEIZED UNDER A WARRANT DESCRIBING ANOTHER AND PERSONAL LETTERS ARE NOT AUTHORIZED BY A WARRANT TO SEARCH FOR "CHEMICALS, LABORATORY EQUIPMENT, AND OTHER PARAPHERNALIA (SIC), WHICH ARE USED IN THE ILLEGAL MANUFACTURE OF METHAMPHETAMINES."

The Fourth Amendment declares that the right to be secure against unreasonable searches shall not be violated, and it further declares that:

> No warrant shall issue, but upon probable cause, supported by oaths or acclamations and particularly describing the place to be searched and the persons or things to be seized.

General searches have long been deemed to violate fundamental rights preserved by the Fourth Amendement. Marron v. United States, 275 U.S. 192, 195 (1927). It is now well established that the Amendment forbids general searches. "[T]he problem [posed by the general warrant] is not that of intrusion per se, but of a general, exploratory rummaging of a person's belongings . . . [The Fourth Amendment addresses the problem] by requiring a 'particular description' of the things to be seized." Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). This requirement "makes general searches . . . impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officers executing the warrant." Stanford v. Texas, 379 U.S. 476, 485 (1965), quoting Marron v. United States, 275 U.S. at 196.

In Marron, petitioner was convicted of conspiracing to maintain a nuisance and other offenses against the National Prohabition Act. He was indicted along with five other defendants involved in the possession and sale of alcoholic beverages. Prohabition agents had obtained a warrant for the search of Marron's place of business and the particular items to be seized were described as "intoxicating liquors and articles for their

manufacture." When agents executed the warrant, they arrested a co-defendant and searched the premises. They found large quantities of liquor, some of which was in a closet. While in the closet, they noticed a ledger showing inventories of liquors, receipts and expenses, including gifts to police officers and other things relating to the business. They also found a cash register, a number of bills against petitioner for gas, electric lights, water, and telephone service furnished on the premises. They seized the ledger and bills which were subsequently introduced at trial. The Supreme Court found that the seizure of the ledger and bills was clearly not authorized by the warrant and could not have been introduced as evidence obtained pursuant to the warrant.

However, the introduction of the ledger was affirmed because it was seized incident to the lawful arrest.

Here, no arrests were made, and the warrant was specific in its terms. It specified that the property to be seized were chemicals, laboratory equipment, and other paraphernalia, which are used in the illegal manufacture of methamphetamines. "Paraphernalia" is commonly defined as equipment, finery, etc., or furnishings or apparatus as articles of equipment. Webster's New International Dictionary of Engish Language, Second Edition, 1936. Given its common meaning, paraphernalia does not encompass personal letters. Given its narrowly defined meaning in the search warrant, paraphernalia only applies to those apparatus and equipment which are to be used in the illegal manufacture of methamphetamines. Clearly, this did not encompass personal letters which were not in the same room as the equipment and chemicals, and the letters were not subject to seizure pursuant to the search warrant prepared by the DEA agents.

II. SEIZURE OF THE PERSONAL LETTERS BY DEA AGENTS CANNOT BE JUSTIFIED UNDER THE PLAIN VIEW DOCTRINE.

As previously noted, a search warrant must describe with particularity the place to be searched and the things to be seized. Trupiano v. United States, 334 U.S. 699 (1948). An unconstitutional search cannot be justified by what it turns up. Bumper v. North Carolina, 391 U.S. 543 (1968). No attempt was made by DEA agents in seeking the warrant to include records, documents or letters or language that would encompass such items. Therefore, if the letters are not admissible pursuant to the search warrant, then the letters must fit within an exception which allows agents to seize objects not specified in the warrant.

The only exception applicable to the current situation is the plain view doctrine. However, in order to fall within this exception, the Government must show (1) that the initial intrusion which afforded agents the opportunity for that plain view was lawful; (2) the discovery of the evidence was inadvertent; and (3) that the incriminating nature of the evidence was immediately apparent. United States v. Clark, 531 F.2d 928, 931 (8th Cir. 1976); citing Coolidge v. New Hampshire, 403 U.S. 443, 464-73 (1971).

In the present situation, the initial intrusion was lawful. The DEA agents had a valid search warrant and were acting pursuant thereto.

The second requirement, an inadvertent discovery, was not satisfied. The letters were not on top of the desk or in any place that they might be seen by the searching officer. The letters were inside a drawer in a desk that was not in the room where the equipment and chemicals were located.

Likewise, the third requirement was not met. Agent Shumard admits that there was nothing incriminating about the letters when he first saw them. In effect, he began reading

the letters out of curiosity. When he saw that some of the letters were incriminating, he read more.

After viewing the letters in the desk, a search was made of Mrs. Crouch's purse. This cannot be said to be a search for weapons for the safety of the twelve or so agents searching the house. In fact, Mrs. Crouch had been there some time and a search for weapons would have been accomplished immediately upon her arrival if the agents felt that they were in any danger.

Clearly, applying the tripartite of United States v. Clark, the letters were not in plain view. They were in envelopes bundled together in a desk drawer or in envelopes in Mrs. Crouch's purse. The letters clearly were not contraband.

Seizure of the letters and the subsequent introduction of them at trial illustrates the very evil that the framers of the Constitution sought to prevent. As Mr. Justice Bradley said in Boyd v. United States, 116 U.S. 616, 624 (1886):

> In order to ascertain the nature of the proceedings intended by the Fourth Amendment to the Constitution under the terms "unreasonable search and seizures", it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and in England. The practice had obtained in the colonies of issuing writs of assistance to a revenue officer, empowering them, in their discretion, to search suspected places for smuggled goods, which James Otis pronounced "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book," since they placed "the liberty of every man in the hands of every petty officer".

The Fourth Circuit held that,"[w]hile there was nothing incriminating about the envelopes in which the letters were originally discovered, the agents acted within the scope

of the search warrant in removing the letters from their envelopes to search for the chemicals and paraphernalia named in the warrant." Slip opinion, p. 5 (attached). The plain view doctrine therefore was not applied until after the actual removal of the letters from the envelopes. In effect, the Fourth Circuit held that the personal letters were within the scope of the warrant even though letters, records or documents were not specifically mentioned. The court approved of the use of the warrant to make a general search--which as previously discussed in Argument I, is clearly unconstitutional. The plain view doctrine, if it is to be applied at all, must apply at the time the letters were first seen in the drawers. Their incriminating nature must be obvious when first seen, not after they have been removed from their envelopes and examined. To hold otherwise would set a presidence allowing law enforcement officers to use any search warrant employing all encompassing words such as "paraphernalia" to rummage through personal correspondence--a result that is abhorent to our fundamental principles of law.

Agent Shumard conceeded that there was nothing incriminating about the letters when he first saw them. Not until he took them out of the envelopes and began reading them did he appreciate their incriminating nature. This case is not unlike Walter v. United States, 447 U.S. 649 (1980), in which sealed packages containing film depicting homosexual activities were erroneously delivered to the wrong addressee. The recipients opened the packages and examined the contents, including attempts by one employee to view, without success, portions of a film by holding it up to the light. The films were labeled with suggestive drawings and

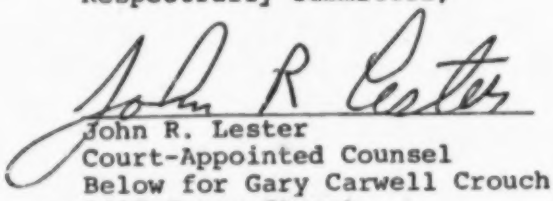
descriptions of their subject matter. The packages were delivered to FBI agents who viewed the films and later obtained indictments against Walters for interstate transportation of obscene materials. A motion to suppress was denied and the Fifth Circuit affirmed. In reversing, this Court held that the unauthorized exhibition of the film constituted an unreasonable invasion of their owner's constitutionally protected interest in privacy. Citing Arkansas v. Sanders, 442 U.S. 753 (1979) and United States v. Chadwick, 443 U.S. 1 (1977), the Court reiterated the well settled principle that an officer's authority to possess a package is distinct from his authority to examine its contents. Although the plain view doctrine was not specifically raised, the analogy to the present case is apparent. Petitioners had a right of privacy in the letters; the letters were not in "plain view"; and their contents could not be examined without the appropriate authority of a warrant. Just as the labels on the film boxes in Walter may have given probable cause to believe the films were obscene, the addresses on the letters may have given probable cause to believe the contents were incriminating. However, further investigation required a warrant. Borrowing language from United States v. Rabinowitz, 339 U.S. 56, 62 (1950), "[t]o condone what happened here is to invite a government official to use a seemingly precise legal warrant only as a ticket to get into a man's home, and, once inside, to launch forth upon unconfined searches and indiscriminate seizures as if armed with all the unbridled and illegal power of a general warrant."

CONCLUSION

The Court below has decided a federal question in a way in conflict with applicable decision of this Court, and

petitioners pray this Court issue a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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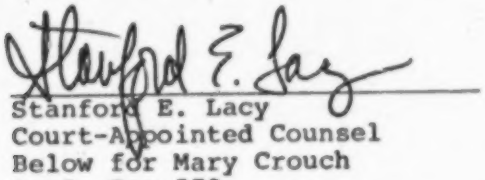

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PUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 79-5080

UNITED STATES OF AMERICA

Appellee

v.

GARY CARWELL CROUCH

Appellant

No. 79-5096

UNITED STATES OF AMERICA

Appellee

v.

MARY CROUCH

Appellant

Appeals from the United States District Court for the District of South Carolina, at Columbia. Charles E. Simmons, Jr., District Judge.

Argued: February 2, 1981 Decided May 4, 1981

Before HAYNSWORTH, Chief Judge, BRYAN, Senior Circuit Judge, and WIDENER, Circuit Judge.

John R. Lester for Appellant in No. 79-5080; (Stanford E. Lacy on brief) for Appellant in No. 79-5096; Eric Wm. Ruschky, Assistant United States Attorney (Thomas E. Lydon, Jr., United States Attorney, on brief) for Appellee.

PER CURIAM:

Mary Crouch and her son, Gary Carwell Crouch, were convicted in the United States District Court of South Carolina of conspiracy to manufacture and distribute methamphetamine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), 846, and the attempted manufacture of the same substance in violation of 21 U.S.C. §§ 841(a)(1), 846, and 18 U.S.C. § 2.[1] They seek relief from these convictions on the ground that certain evidence introduced by the government at trial was seized in violation of the Fourth Amendment. We hold that the seizure was not invalid and affirm the judgment of the district court.

On July 6, 1978, agents of the Drug Enforcement Administration executed a federal search warrant at 2207 Lincoln Street in Columbia, South Carolina, the home of Mary Crouch. The warrant directed the seizure of ". . . chemicals, laboratory equipment, and other paraphernalia, which are used in the illegal manufacture of methamphetamines in violation of 21 U.S.C. § 841(a)(1)."

---

1. Gary Crouch was convicted by a jury. Mary Crouch waived a jury trial and was found guilty by the court on the same stipulated record.

During the course of the search, agents discovered a number of letters written by each of the appellants to the other. Letters received by Gary Crouch were located in a desk drawer, and those received by Mary Crouch were found in her purse. In both cases, the letters were within the premises subject to search under the warrant and were in envelopes which had already been opened. The agents examined the contents of these letters and found that they contained information concerning the manufacture of methamphetamine, including a partial formula for that substance. Such information was relevant to the charge that appellants were manufacturing methamphetamines, and the letters were seized as evidence.

Defendants unsuccessfully moved to suppress these letters at trial. They take the position that Marron v. United States, 275 U.S. 192 (1927), forbade the seizure of paper writings under a search warrant for paraphernalia as being beyond the description of the warrant, and that the seizure was not justified under the plain view doctrine. Because we find the seizure of the letters to have been proper under the plain view doctrine, we need not determine whether they come under the rule in Marron.

The application of the plain view doctrine to the facts of this case is clear. The agents were legally on

the premises pursuant to a search warrant, the validity of which is not contested. That the letters were discovered inadvertently is adequately demonstrated by the absence of any reference to them in the affidavit for the search warrant, and by Agent Shumard's testimony that the officers did not enter upon the search with the expectation of finding such letters. Furthermore, the incriminating nature of the letters was immediately apparent to the agents. While there was nothing incriminating about the envelopes in which the letters were originally discovered, the agents acted within the scope of the search warrant in removing the letters from those envelopes to search for the chemicals and paraphernalia named in the warrant. The writings thus exposed to their view were clearly and immediately incriminating.

We attach no significance to the fact that some cursory reading of the letters was necessary in order to establish their nature. In United States v. Ochs, 595 F2d 1247 (2d Cir. 1979), Judge Friendly noted that "[a] number of courts, including this one, have upheld without much discussion the seizure of documents during an otherwise valid search as in 'plain view' notwithstanding the fact that some perusal, generally fairly brief, of the documents was clearly necessary in order for the police to perceive the relevance of the document to crime." 595 F2d at 1257, note 8. In that case, the Second Circuit upheld the plain view seizure of certain index cards which in fact were loansharking records,

regardless of the fact that police were obliged to take note of their contents before their incriminating nature became apparent. Similarly, in Mapp v. Warden, 531 F2d 1167 (2d Cir. 1976), on facts nearly indistinguishable from those here, the same circuit held that certain rent receipts were properly seized as in plain view even though their incriminating nature was only apparent after police noticed a suspicious name on them. The court stated that ". . .it would be somewhat absurd to require an investigator to be oblivious to that which would be apparent to anyone else with normal powers of observation." 531 F2d at 1172.

We have noted with approval the rule in Ochs and Mapp, supra, that the brief perusal of an item does not render its incriminating nature any the less immediately apparent.[2] In United States v. Phillips, 593 F2d 553 (4th Cir. 1978), we held that police engaged in the execution of certain arrest warrants acted properly in seizing three address books. In two such incidents, officers came upon closed books and, upon opening them and discovering lists of names and addresses, seized them as evidence of a drug conspiracy.

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2. United States v. Presler, 610 F2d 1206, 1211 (4th Cir. 1978). In Presler we did not agree with the rationale upon which the Ochs court justified the initial intrusion into a briefcase in which the index cards were found. This criticism, however, was limited in scope and did not extend to the latter case's analysis of an officer's right to read documents in order to determine their nature.

Opposition

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OCTOBER TERM, 1980

GARY CARWELL CROUCH AND MARY CROUCH, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

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GARY CARWELL CROUCH AND MARY CROUCH, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that their Fourth Amendment rights were violated when law enforcement agents, executing a warrant to search for "chemicals, laboratory equipment, and other paraphernalia, which are used in the illegal manufacture of methamphetamines," read and seized letters that they found in open envelopes in a desk drawer and in the purse of petitioner Mary Crouch.

After a jury trial in the United States District Court for the District of South Carolina, petitioner Gary Crouch was convicted of attempting to manufacture methamphetamine and of conspiring to manufacture and distribute that substance, in violation of 21 U.S.C. 841(a)(1) and 846. Petitioner Mary Crouch, Gary Crouch's mother, was convicted of the same offenses after a bench trial on a stipulated record. Gary Crouch was

sentenced to concurrent terms of five years' imprisonment, and Mary Crouch was sentenced to concurrent terms of imprisonment for one year and one day. For each petitioner, the terms of imprisonment are to be followed by a two-year special parole term. On a combined appeal, the court of appeals affirmed (Pet. App. 14-20).

1. Agents of the Drug Enforcement Administration received information from a chemical supply company that petitioner Gary Crouch, a state penitentiary inmate, had placed three orders for laboratory equipment and precursor chemicals that could be used to manufacture methamphetamine. The first order was sent in an envelope bearing on its back the marking of the state department of corrections. The second and third orders were paid for by personal checks drawn on the account of petitioner Mary Crouch. All three orders were to be sent to the Crouch residence in Columbia, South Carolina. A controlled delivery was made of the second and third orders. The second order was accepted and signed for by Gary Crouch's brother, James. The third order was accepted and signed for by Mary Crouch, who told the delivery man that she was waiting for the package and that he had come to the right place (II A. D-4 and D-5). 1/

1/ "A." refers to the appendix in the court of appeals, which includes two volumes, separately paginated and bound together.

On the afternoon of July 3, 1978, Gary Crouch was released from the state penitentiary for a three-day furlough (II A. D-5). That same evening, Gary and Mary Crouch purchased a 100-capsule bottle of vitamins and two 100-capsule bottles of Tylenol. The capsules were of the hard-gelatin type known to be used for the distribution of controlled substances in prisons. On July 5, Gary and his brother James were observed in the local public library reading Volume 1 of the Encyclopedia of Chemical Technology, which describes procedures for the manufacture of methamphetamine. On July 6, Gary was driven to the library by his mother Mary, and he examined two other volumes of the Encyclopedia. On both days, he was seen photocopyihg certain materials from the library volumes (Add. Aff.). 2/

Based on the foregoing information, a warrant was obtained on July 3, 1978, authorizing the search of the Crouch residence for "chemicals, laboratory equipment, and other paraphernalia, which was used in the illegal manufacture of methamphetamines" (II A. D-1). The warrant was executed on the afternoon of July 6 (II A. 4-5, D-2). 3/ The officers executing the warrant found chemicals, laboratory equipment, and empty gelatin capsules (II A. 6-26), but no methamphetamine (II A. 57). The chemicals,

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2/ "Add. Aff." refers to the Addendum to Affidavit for Search Warrant, a copy of which is attached to this memorandum (App., infra).

3/ The affidavit initially submitted in support of the application for the warrant (II A. D-3 through D-5) set forth only information obtained prior to July 3. Prior to execution of the warrant, DEA agents filed with the magistrate an addendum to the affidavit (App., infra) describing the results of the surveillance of Gary Crouch while he was home on furlough.

however, were sufficient to make a pound and a half of methamphetamine, an amount that could have been divided into 6000 individual doses having a street value of $60,000 (II A. 76-77).

The officers also found, in a drawer of the desk in a room next to the one in which the laboratory was discovered, a bundle of open envelopes addressed to Gary Crouch in the state penitentiary from Mary Crouch (I A. 48, 50; II A. 27; GX 32, 34). The agent who found the envelopes removed the letter contained in one of them and, after glancing at the first few sentences, ascertained that it was related to the offense under investigation (I A. 49, 51). The agent then perused the remaining letters and found other letters referring to an order from the chemical equipment company that had not yet arrived (II A. 32) and one letter (dated March 12, 1978) containing part of a formula for the synthesis of methamphetamine. Subsequently, the agents found another batch of letters, from Gary to Mary Crouch, in Mary's purse (I A. 38, 48, 50). 4/ In these letters, Gary expressed his intention to begin the chemical production of cocaine once he had been successful in producing methamphetamine (II A. 29).

4/ Mary, who had driven Gary back to the penitentiary, was not present when the search began but returned while it was in progress (I A. 36). The purse in which the letters were found was apparently one of a number of pocketbooks lying in the living room that the agents searched (I A. 38).

2. Petitioners' contention that the seizure of the letters was unlawful is insubstantial. The agents were authorized by warrant to search for methamphetamine and the paraphernalia used to manufacture the substance. As they correctly interpreted the warrant (I A. 46), the latter term included the formula necessary to synthesize methamphetamine from precursor chemicals as well as any other material that had been photocopied at the library to aid the operation. Since the magistrate had been specifically informed of Gary Crouch's activities at the library prior to execution of the warrant, it would be contrary to common sense to presume that the magistrate did not intend the descriptive passage of the warrant to be as broad as needed to authorize the seizure of all the relevant items, including any documents that might have been necessary or useful in the manufacture of the drug. 5/

The drawers of the desk, the pocketbooks lying in the living room, and the envelopes found in both were all places in which both methamphetamine itself and the formula for its synthesis could reasonably be expected to be found. One of the letters seized in fact did contain a partial formula for the drug's

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5/ Petitioners rely on Marron v. United States, 275 U.S. 192 (1927), in which the Court held that a warrant authorizing the seizure of "intoxicating liquors and articles for their manufacture" did not authorize the seizure of ledgers and bills found during the search. The warrant here was broader since it authorized the seizure of chemicals, equipment, and paraphernalia used in the manufacture of illicit drugs. Since the correct chemical formula was every bit as important to the manufacture of methamphetamines as laboratory equipment and precursor chemicals, it clearly came within the description of the property to be seized in the warrant.

manufacture. The remaining letters "clearly had a sufficient nexus to the crime being investigated to be subject to seizure." United States v. Davis, 589 F.2d 904, 906 (5th Cir.), cert. denied, 441 U.S. 950 (1979).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

LAWRENCE G. WALLACE
Acting Solicitor General

AUGUST 1981

While the nature of the books' contents was unknown to the officers before such perusal, we held that the items were properly seized as in plain view.[3]

In this case, the agents read a number of letters revealed to them in the course of their search. While such perusal was necessary to determine the letters' incriminating nature, it revealed no more than would have been evident "to anyone else with normal powers of observation." Thus, we find the letters to have been immediately incriminating and properly subject to seizure.

Accordingly, the judgment of the district court is

AFFIRMED.[4]

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3. See also United States v. Haynie, et al, ____F2d____, No. 79-5052 (4th Cir., Dec. 18, 1980) (notebooks discovered following hot pursuit entry).

4. On facts similar to those before us, we held in United States v. Avery, 447 F2d 978 (4th Cir. 1971), that the plain view doctrine applied to a map of a bank, which apparently required explanation to identify it as the robbed premises, seized in execution of a search warrant apparently issued in aid of a charge of bank robbery which described the article searched for as money.

APPENDIX

ADDENDUM TO AFFIDAVIT FOR SEARCH WARRANT DATED JULY 3, 1978

On July 3, 1978, at approximately 8:00 p.m., Gary Crouch and his mother, Mrs. Mary Crouch, purchased from K-Mart Store, Bush River Road, Columbia, South Carolina, 1/100 capsule bottle of vitamin capsules and 2/100 capsule bottles of Tylenol. The surveillance of Gary Crouch and Mary Crouch was conducted by Pete Charette, DEA, and Dennis Craig, DHEC. The aforementioned capsules were of the hard gelatin type.

On July 5, 1978, at approximately 1:30 p.m., Gary Crouch and James Crouch, under the surveillance of your affiant, went to the Richland County Public Library, Washington and Sumter Streets, Columbia, South Carolina. Deputy Sheriff Watson, RCSO, observed Gary and James Crouch looking at reference book, to wit: Volume 1 of Encyclopedia of Chemical Technology, Second Edition. Your affiant has been informed by forensic chemists of the State Law Enforcement Division that this volume contains procedures for the manufacture of methamphetamine.

On July 6, 1978, at approximately 10:00 a.m., Gary Crouch went back to the library and was driven there from his residence by Mary Crouch. They were under the surveillance of Detective H. Smith, Columbia Police Department, and Deputy B. Watkins, RCSO. Your affiant was informed by Deputy Watkins that Gary Crouch had looked at reference books, to wit: Volumes 2 and 16 of the Encyclopedia of Chemical Technology, Second Edition.

Subsequent to the issuance of the search warrant on July 3, 1978, the residence at 2207 Lincoln Street, has been under constant 24-hour surveillance by agents of DEA, SLED, RCSO, DHEC, Columbia Police Department. During the night-time, there was little if any visible activity observed from the outside, however, every night there was a light on in the left back upstairs room as viewed from the street. Your affiant has been informed by Detective H. Smith, who has previously searched the residence, that there is a kitchen in the rear upstairs of the residence, since the residence was at one time a duplex.

Also, when Gary Crouch was at the Columbia Public Library on July 3 and July 5, 1978, he was observed making photocopy reproductions of pages of the aforementioned reference books.

Your affiant knows that the distribution of controlled substances within penal institutions in South Carolina is common practice. It is believed by your affiant that Gary Crouch will use the previously described hard gelatin capsules of vitamin and Tylenol to smuggle into Goodman Correctional Institution methamphetamine, which is believed to have been manufactured at 2207 Lincoln Street.

This addendum incorporates by reference the previous attachment to Affidavit dated July 3, 1978, in connection with a search warrant for the residence located at 2207 Lincoln Street.

Norman C. Shumard